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In re Application of
Nozaki and Nakata
Application No. 10/697,006
Filed: October 31, 2003
Attorney Docket No. SHO-0028
For: Gaming Machine

OFFICE OF PETITIONS
DECISION REFUSING TO
ACCORD STATUS
UNDER 37 CFR 1.47(a)

This is a decision on the petition under 37 CFR 1.47(a), filed August 24, 2004.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. Any response should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)" and may include an oath or declaration executed by the inventor. **Failure to respond will result in abandonment of the application.**

A grantable petition under 37 CFR 1.47(a) requires

- (1) proof that the non-signing inventor cannot be found or reached after diligent effort or that the inventor refuses to sign after having been presented with the application papers (specification, claims, and drawings),
- (2) a proper oath or Declaration executed by the available joint inventor(s),
- (3) the fee of \$130 as specified in 37 CFR § 1.17(h), and
- (4) the last known address of the omitted inventor(s).

In addition to the above requirements, the signing inventors must sign the declaration on behalf of the non-signing inventor. See MPEP 409.03(a).

The instant petition fails to satisfy (1) and (2).

As to item (1), petitioner must establish that the non-signing inventor refused to sign the oath or declaration after being presented with the application papers. Petitioner has failed to establish that the non-signing inventor was presented with a copy of the application. An inventor cannot sign a declaration stating he or she has "reviewed and understands the application papers" when the inventor has not been presented with a copy of the application and therefore has not reviewed the application. Refusal within the meaning of 37 CFR 1.47 requires that the inventor be presented with the application papers and given adequate time to review the contents of the application. Until the inventor reviews the papers and reads the specification and claims, he cannot know if he is actually an inventor of the claimed invention. Petitioner should send a copy of the application to the inventor along with instructions setting a deadline or a statement that no response will constitute a refusal. This sort of ultimatum lends support to a finding of refusal by conduct. The proof of the pertinent events should be made by a statement of someone with firsthand knowledge of the events and should include documentary evidence, such as a certified mail return receipt, cover letter of instructions, telegram, etc.

Petitioner should note that if the non-signing inventor gives a reason for refusing to sign the application oath or declaration, that reason should be stated in the affidavit or declaration.

As to (2), the mailing address for the non-signing inventor on the declaration is listed as Aruze Corporation. The "mailing address" on a declaration should be the address where an applicant customarily receives mail. The record fails to indicate Nakata normally receives his mail at Aruze Corporation. A different address for the non-signing inventor is listed in the petition. The address listed on the declaration for the non-signing inventor can be corrected either by the submission for a supplemental declaration or the submission of an Application Data Sheet.¹

A copy of the petition was filed on October 6, 2004. The Office is assuming the second copy is identical to the original petition. If any differences exist, petitioner should notify the Office. As a result of the filing of a copy of the original petition, the petition fee of \$130 was incorrectly charged a second time. The \$130 will be credited to petitioner's deposit account.

Further correspondence with respect to this matter should be addressed as follows:

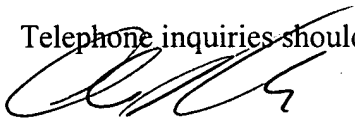
By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By facsimile: (703) 872-9306
Attn: Office of Petitions

By hand: U.S. Patent and Trademark Office
220 20th Street South
Customer Window, Mail Stop Petition
Crystal Plaza Two, Lobby, Room 1B03
Arlington, VA 22202

If a request for reconsideration is filed, and a decision on the new petition is not received within three months, petitioner may wish to call the number below to check on the status of the renewed petition.

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.



Charles Steven Brantley
Petitions Attorney
Office of Petitions

¹ Effective November 7, 2000 the mailing address of each inventor may be provided in an application data sheet.